
SENATE BILL 6146

State of Washington

54th Legislature

1996 Regular Session

By Senators Loveland, Swecker, Drew and Oke; by request of Department of Fish and Wildlife

Read first time 01/08/96. Referred to Committee on Natural Resources.

1 AN ACT Relating to property damage by wildlife; adding new sections
2 to chapter 77.12 RCW; creating new sections; repealing RCW 77.12.265,
3 77.12.270, 77.12.280, 77.12.290, and 77.12.300; providing an expiration
4 date; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 (1) As the number of people in the state grows and wildlife habitat
8 is altered, people will encounter wildlife more frequently. As a
9 result, conflicts between humans and wildlife will also increase.
10 Wildlife is a public resource of significant value to the people of the
11 state and the responsibility to minimize and resolve these conflicts is
12 shared by all citizens of the state.

13 (2) In particular, the state recognizes the importance of
14 commercial agricultural and horticultural crop production and the value
15 of healthy deer and elk populations, which can damage such crops. The
16 legislature further finds that damage prevention is key to maintaining
17 healthy deer and elk populations, wildlife-related recreational
18 opportunities, and commercially productive agricultural and
19 horticultural crops, and that the state, participants in wildlife

1 recreation, and private landowners and tenants share the responsibility
2 for damage prevention. Toward this end, the legislature encourages
3 landowners and tenants to contribute through their land management
4 practices to healthy wildlife populations and to provide access for
5 related recreation. It is in the best interests of the state for the
6 department of fish and wildlife to respond quickly to wildlife damage
7 complaints and to work with these landowners and tenants to minimize
8 and/or prevent damages and conflicts while maintaining deer and elk
9 populations for enjoyment by all citizens of the state.

10 (3) A timely and simplified process for resolving claims for
11 damages caused by deer and elk for commercial agricultural or
12 horticultural products is beneficial to the claimant and the state.

13 NEW SECTION. **Sec. 2.** Unless otherwise specified, the following
14 definitions apply throughout sections 3 through 9 of this act:

15 (1) "Crop" means a commercially raised horticultural and/or
16 agricultural product and includes growing or harvested product.

17 (2) "Emergency" means an unforeseen circumstance beyond the control
18 of the landowner or tenant that presents a real and immediate threat to
19 crops, domestic animals, fowl, or other property.

20 (3) "Immediate family member" means spouse, brother, sister,
21 grandparent, parent, child, or grandchild.

22 NEW SECTION. **Sec. 3.** The department shall work closely with
23 landowners and tenants suffering game damage problems to control damage
24 without killing the animals when practical, to increase the harvest of
25 damage-causing animals in hunting seasons, and to kill the animals when
26 no other practical means of damage control is feasible.

27 If the department receives recurring complaints regarding property
28 being damaged as described in this section or section 4 of this act
29 from the owner or tenant of real property, or receives such complaints
30 from several such owners or tenants in a locale, the commission shall
31 consider conducting a special hunt or special hunts to reduce the
32 potential for such damage.

33 NEW SECTION. **Sec. 4.** (1) Subject to the following limitations and
34 conditions, the owner, the owner's immediate family member, the owner's
35 documented employee, or a tenant of real property may trap or kill on
36 that property, without the licenses required under RCW 77.32.010, wild

1 animals or wild birds that are damaging crops, domestic animals, fowl,
2 or other property:

3 (a) Endangered species shall not be hunted, trapped, or killed;

4 (b) Except in an emergency situation, deer, elk, and protected
5 wildlife shall not be killed without a permit issued and conditioned by
6 the director or the director's designee. In an emergency, the
7 department may give verbal permission to trap or kill any deer, elk, or
8 protected wildlife that is damaging crops, domestic animals, fowl, or
9 other property; and

10 (c) On privately owned cattle ranching lands, the land owner or
11 lessee may declare an emergency only when the department has not
12 responded within forty-eight hours after having been contacted by the
13 land owner or lessee regarding damage caused by wild animals or wild
14 birds. In such an emergency, the owner or lessee may trap or kill a
15 deer, elk, or other protected wildlife that is causing the damage but
16 deer and elk may only be killed if such lands were open to public
17 hunting during the previous hunting season, or the closure to public
18 hunting was coordinated with the department to protect property and
19 livestock.

20 (2) Except for coyotes and Columbian ground squirrels, wildlife
21 trapped or killed under this section remain the property of the state,
22 and the person trapping or killing the wildlife shall notify the
23 department immediately. The department shall dispose of wildlife so
24 taken within three working days of receiving such a notification and in
25 a manner determined by the director to be in the best interest of the
26 state.

27 NEW SECTION. **Sec. 5.** (1) Pursuant to this section, the director
28 or the director's designee may distribute money appropriated to pay
29 claims for damages to crops caused by wild deer or elk in an amount of
30 up to ten thousand dollars per claim. Damages payable under this
31 section are limited to the value of such commercially raised
32 horticultural or agricultural crops, whether growing or harvested, and
33 shall be paid only to the owner of the crop at the time of damage,
34 without assignment. Damages shall not include damage to other real or
35 personal property including other vegetation or animals, damages caused
36 by animals other than wild deer or elk, lost profits, consequential
37 damages, or any other damages whatsoever. These damages shall comprise

1 the exclusive remedy for claims against the state for damages caused by
2 wildlife.

3 (2) The director may adopt rules for the form of affidavits or
4 proof to be provided in claims under this section. The director may
5 adopt rules to specify the time and method of assessing damage. The
6 burden of proving damages shall be on the claimant. The director and
7 claimant may agree to assessment of crop damage by a third party but
8 payment of claims shall remain subject to the other conditions and
9 limits of this chapter.

10 (3) If funds are limited, payments of claims shall be prioritized
11 in the order that the claims are received. No claim may be processed
12 if:

13 (a) The claimant did not notify the department within ten days of
14 discovery of the damage. If the claimant intends to take steps that
15 prevent determination of damages, such as harvest of damaged crops,
16 then the claimant shall notify the department as soon as reasonably
17 possible after discovery so that the department has an opportunity to
18 document the damage and take steps to prevent additional damage; or

19 (b) The claimant did not present a complete, written claim within
20 sixty days after the damage, or the last day of damaging if the damage
21 was of a continuing nature.

22 (4) The director or the director's designee may examine and assess
23 the damage upon notice. The department and claimant may agree to an
24 assessment of damages by a neutral person or persons, but the
25 department and claimant shall share equally in the costs of such third
26 parties.

27 (5) There shall be no payment for damages if:

28 (a) The crops are on lands leased from any public agency;

29 (b) The landowner or claimant restricted or prohibited public
30 hunting opportunity on the land during the previous hunting season,
31 unless that restriction or prohibition was coordinated with the
32 department to protect property or livestock;

33 (c) The landowner or claimant failed to use or maintain applicable
34 damage prevention materials or methods furnished by the department, or
35 failed to comply with an agreement under RCW 77.12.260;

36 (d) The director has expended all funds appropriated for payment of
37 such claims for the current fiscal year; or

38 (e) The damages are covered by insurance. The claimant shall
39 notify the department at the time of claim of insurance coverage in the

1 manner required by the director. Insurance coverage shall cover all
2 damages prior to any payment under this chapter.

3 (6) When there is a determination of claim by the director or the
4 director's designee pursuant to this section, the claimant has thirty
5 days to accept the claim or it is deemed rejected.

6 NEW SECTION. **Sec. 6.** If the claimant does not accept the
7 director's decision under section 5 of this act, or if the claim
8 exceeds ten thousand dollars, then the claim may be filed with the
9 office of risk management under RCW 4.92.040(5). The office of risk
10 management shall recommend to the legislature whether the claim should
11 be paid. If the legislature approves the claim, the director shall pay
12 it from moneys appropriated for that purpose. No funds shall be
13 expended for damages under this chapter except as appropriated by the
14 legislature.

15 NEW SECTION. **Sec. 7.** If the damaged crops that are the basis for
16 a claim under sections 3 through 6 of this act are grown on lands that
17 were not used for commercially raising horticultural and/or
18 agricultural products prior to July 1, 1996, then there shall be no
19 authority to pay funds for such crops under section 5 of this act.

20 NEW SECTION. **Sec. 8.** The department may pay no more than one
21 hundred twenty thousand dollars per fiscal year from the wildlife fund
22 for claims under section 5 of this act and for assessment costs and
23 compromise of claims. Such money shall be used to pay animal damage
24 claims only if the claim meets the conditions of section 5 of this act
25 and the damage occurred in a place where the opportunity to hunt was
26 not restricted or prohibited by a county, municipality, or other public
27 entity during the season prior to the occurrence of the damage.

28 NEW SECTION. **Sec. 9.** (1) The department may pay no more than
29 thirty thousand dollars per fiscal year from the general fund for
30 claims under section 5 of this act and for assessment costs and
31 compromise of claims unless the legislature declares an emergency.
32 Such money shall be used to pay animal damage claims only if the claim
33 meets the conditions of section 5 of this act and the damage occurred
34 in a place where the opportunity to hunt was restricted or prohibited

1 by a county, municipality, or other public entity during the season
2 prior to the occurrence of the damage.

3 (2) The legislature may declare an emergency, defined for the
4 purposes of this section as any happening arising from weather, other
5 natural conditions, or fire that causes unusually great damage to
6 commercially raised agricultural or horticultural crops by deer or elk.
7 In an emergency, the department may pay as much as may be subsequently
8 appropriated from the general fund, in addition to the funds authorized
9 under subsection (1) of this section, for claims under section 5 of
10 this act and for assessment and compromise of claims. Such money shall
11 be used to pay animal damage claims only if the claim meets the
12 conditions of section 5 of this act and the department has expended all
13 funds authorized under section 8 of this act or subsection (1) of this
14 section.

15 NEW SECTION. **Sec. 10.** This act applies prospectively only and not
16 retroactively. It applies only to claims that arise on or after the
17 effective date of this act.

18 NEW SECTION. **Sec. 11.** Sections 2 through 9 of this act are each
19 added to chapter 77.12 RCW.

20 NEW SECTION. **Sec. 12.** The following acts or parts of acts are
21 each repealed:

22 (1) RCW 77.12.265 and 1995 c 210 s 1, 1987 c 506 s 35, 1985 c 355
23 s 1, 1980 c 78 s 91, & 1955 c 36 s 77.16.230;

24 (2) RCW 77.12.270 and 1987 c 506 s 36, 1986 c 126 s 11, 1980 c 78
25 s 45, 1963 c 177 s 8, & 1955 c 36 s 77.12.270;

26 (3) RCW 77.12.280 and 1987 c 506 s 37, 1986 c 126 s 12, 1980 c 78
27 s 46, 1979 c 151 s 176, 1977 ex.s. c 144 s 8, 1957 c 177 s 1, & 1955 c
28 36 s 77.12.280;

29 (4) RCW 77.12.290 and 1987 c 506 s 38, 1980 c 78 s 47 1963 c 177 s
30 9, 1957 c 177 s 2, & 1955 c 36 s 77.12.290; and

31 (5) RCW 77.12.300 and 1987 c 506 s 39, 1980 c 78 s 48, 1957 c 177
32 s 3, & 1955 c 36 s 77.12.300.

33 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act shall
34 take effect July 1, 1996.

1 NEW SECTION. **Sec. 14.** (1) Notwithstanding any repeal, until July
2 1, 1996, claims exceeding two thousand dollars that have been filed
3 under RCW 77.12.280(1) and that have been submitted to the legislature
4 under RCW 4.92.040(5) by the risk management office prior may be paid
5 by the department from moneys appropriated for payment of such claims.

6 (2) This section shall expire June 30, 1996.

--- END ---